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April 21, 1983

Mrs. Judith Bastian  
Deputy Director  
Department of Personnel  
State House Annex  
Concord, New Hampshire 03301

Dear Mrs. Bastian:

By letter dated March 28, 1983, you have asked for an opinion with respect to the interpretation of RSA 98-A:4. Specifically, you have asked whether a seasonal employee may choose to "carry over" any accumulated annual leave from one season to another season. For the reasons stated below, we believe that a seasonal employee may not carry over accumulated annual leave.

RSA 98-A:4 provides as follows:

Retroactive Accumulation. If such permanent temporary employee or such permanent seasonal employee is employed beyond the 6 months period he shall be eligible for retroactive accumulation of [and?] payment of accrued annual leave upon being laid off for the season or separation from service. Such employee shall be eligible to accumulate sick leave and shall be allowed to carry over any prior sick leave at the same rate for time actually worked. No payment for sick leave, however, shall be made for accrued sick leave upon lay-off or separation.



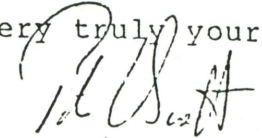
The statute specifically provides that a seasonal employee will be eligible for payment of accrued annual leave upon being laid off for the season. Ordinarily, the provision for one type of permissible action in a statute excludes alternative types of action. State v. Wilton Railroad, 89 N.H. 59, 61 (1937); 2A Sands, Sutherland Statutory Construction, §47.23 (4th ed. 1973). This well-established principal of statutory construction has been expressed in the familiar Latin maxim: *Expressio unius est exclusio alterius*. Howe v. Howe, 87 N.H. 338, 341 (1935). Accordingly, a seasonal employee would not be eligible to carry over accrued annual leave.

This interpretation of RSA 98-A:4 is reinforced by reference to the provisions of RSA 98-A:4 which deal with sick leave. Under the statute, a seasonal employee is specifically allowed to carry over sick leave. Accordingly, the absence of a similar provision authorizing the carry over of annual leave indicates that the legislature did not intend to allow seasonal employees to carry over annual leave.

Further support for this interpretation, which distinguishes between sick leave and annual leave, can be found in the Rules of the Department of Personnel. Under Per 307.03(h), a classified state employee will receive compensation for accrued annual leave upon separation from State service. Under Per 307.04(g), however, the accrued sick leave will lapse. Under Per 307.04(l), a former employee, originally laid off by the State due to cutbacks in the work force and later reinstated within three years, will be allowed to revive the unused balance of his sick leave. Therefore, the reinstated classified employee is treated similarly to the seasonal employee in that accrued annual leave is paid at the time of separation while accrued sick leave is, in effect, carried over.

If you have any further questions on this matter, please let me know.

Very truly yours,

  
Peter C. Scott  
Assistant Attorney General  
Eminent Domain Division

PCS/krh

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